IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2398 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FATMABAI ISMAIL

Versus

MORBI NAGAR PANCHAYAT

Appearance:

1. Special Civil Application No. 2398 of 1994

MR CG GOVINDAN for Mr. AK CLERK for Petitioner

MR BP TANNA for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 21/10/2004

ORAL JUDGEMENT

In the present application preferred under

Article 227 of the Constitution of India, the petitioner has challenged the judgment and award dated 21st June, 1993 passed by the learned Presiding Officer, Labour Court, Rajkot [hereinafter referred to as, "the Labour Court"] in Reference (ICR) No. 1813 of 1987.

The petitioner-workman was employed in the respondent-Morbi Nagarpalika [hereinafter referred to as, "the Municipality"] in its Public Works department as labourer. At the time of entry in service, her date of birth was recorded as that of 1st April, 1927. Nearing the age of superannuation, the petitioner approached the Civil Court for injunction against her untimely retirement. After withdrawal of the said suit, the petitioner was retired from service on 18th June, 1987. The petitioner then raised industrial dispute and claimed that her date of birth was wrongly entered as 1st April, 1927 and that she was born on 3rd May, 1939. She claimed right to reinstatement in service and continuity in service till she attained the age of superannuation on the basis of her birth date i.e. 3rd May, 1939. The claim was contested by the Municipality.

The Labour Court has found that the date of birth i.e. 1st April, 1927 was entered in the service record of the petitioner on the basis of the information given by the petitioner. The said entry was also endorsed by the petitioner by putting her thumb impression. No documentary evidence of the date of birth was available. The claim of the petitioner was, therefore, rejected. Therefore, the present petition.

Pending the present petition, by Order dated 30th September, 1995 [Coram :- H.L Gokhale, J.], it was recorded that, "..It is agreed between the parties and so is stated by both the advocates who are present in the Court that the petitioner be examined by the Civil Surgeon, Jamnagar, and his decision will be accepted as binding on both the parties." Learned advocate Mr. Govindan has produced the communication dated 29th October, 1994 of the Senior Professor of Medicine, M.P Shah Medical College, Jamnagar. It was stated that the said communication was sent pursuant to the medical examination of the petitioner conducted on 28th October, 1994. It was opined that, "..No definite opinion can be given regarding age, once the candidate has crossed the age of 25 years. However, from the above circumstantial evidence, she appear to be above 60 (sixty) years of age."

As the medical opinion does not give out definite

age of the petitioner on the date of her examination, the said report cannot be relied upon for determining the precise date of birth of the petitioner.

Mr. Govindan has admitted that the petitioner is an illiterate lady. No documentary evidence or contemporary record of the date of birth of the petitioner was available. He has submitted that it was the belief of the petitioner that her date of birth was 3rd May, 1939 and not 1st April, 1927, as recorded in the service book. Before the Labour Court, the petitioner had deposed that at the time of her entry in service, she had given out her age to be 45 years and that she had served for some 25 years. The evidence of the petitioner discloses her ignorance and lack of sense of time. If her evidence were believed, she would be of the age of seventy years at the time of her retirement from service. In absence of any record to the contrary, the entry made in the service book and countersigned by the petitioner some 25 years before cannot be changed on the basis of mere belief of the petitioner. The Labour Court has rightly rejected the claim made by the petitioner.

No case for interference is made out. The petition is dismissed. Rule is discharged. There shall be no order as to cost.

{Miss R.M Doshit, J.}

Prakash*